

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 23 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Network US, Inc.'s  
Acquisition of the Customer Base  
of Affinity Corporation

Docket No. 94-129

PETITION FOR WAIVER OF COMMISSION RULES

1. Network US, Inc. ("Network") requests that the Federal Communications Commission (the "Commission") grant a waiver of its rules and orders governing the authorization and verification necessary to change a consumer's preferred carrier. As demonstrated herein, good cause exists for the granting of the waiver requested: the purposes for the general rule for which the waiver is being sought will be fulfilled by the measures proposed by Network, and the granting of the waiver requested will be in the public interest in general, and specifically in the interest of the customers whose accounts are affected by the change in carrier. See *Northeastern Cellular Telephone Company v. F.C.C.*, 897 F.2d 1164 (D.C. 1990); and *WAIT Radio v. F.C.C.*, 418 F.2d 1153 (D.C. 1969).

2. Network and Affinity have entered into a Foreclosure Sale Asset Purchase Agreement, attached hereto as Exhibit "A". Under the Agreement, CAA, Inc. ("Sub"), a wholly-owned subsidiary of Network, acquired substantially all of the telecommunications assets of Affinity, including Affinity's customer accounts, pursuant to a Uniform Commercial Code Foreclosure Sale under Wis. Stats. Section 409.504 (the "Acquisition").

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Prior to consummation of the Acquisition on February 2, 2001 (the "Closing"), Affinity had been suffering financial difficulties, and its customers were on the brink of experiencing disconnection of their telecommunications service. As a result, Network, through its wholly owned subsidiary, Sub, acquired the assets of Affinity in order to ensure uninterrupted service to Affinity's customers. Simultaneous with the Closing, Sub merged with and into Network, its parent company.

Network is in good standing or has applications pending in each jurisdiction required to provide interexchange services to the former Affinity customers. Network has arranged for Affinity to continue service to the affected customers pursuant to Affinity's existing authority in each jurisdiction, until such time as Network has the requisite authority.

The special circumstances warranting a deviation or waiver from the Commission's rules and orders include the need to provide seamless transitions of long distance service for the affected Affinity customers.

3. Network and Affinity intend to engage in two separate customer notification processes. Both customer notification letters are attached to this filing (see Exhibit B). One letter was sent prior to consummation of the transaction and the other will be sent post-transaction. The first letter informed all Affinity customers of the proposed assumption of the customers' service by Network, assuring the customers that they would either receive the same or better rates and services than those which they were receiving from Affinity, and advising the customers that they can choose a different preferred carrier should they desire. *The second letter will confirm consummation and reiterate the foregoing information, assurances and advice.*

Further, Network will take responsibility to investigate, respond, and attempt to cure any complaints of former Affinity customers after the sale.

4. The number of lines involved in the transaction is 30,693.

5. The exchanges involved in the transaction are as follows:

Bell Atlantic: CT, DC, DE, MD, NJ, PA and WV

Bell South: AL, GA, FL, KY, LA, MS, NC and TN

Southwestern Bell: AR, KS, MO, OK and TX

Pacific Bell: CA

NY Telephone: NY

Contel: AL

Alltel: AL

ICG: AL

Ameritech: OH, IL, IN, MI

USWest: NE, ND, MN, WA

New England Telephone: ME

Qwest: AZ, CO, ID, MT, UT and WY

GTE: CA, ID, IN, IL and WA

6. The Commission is charged with administration in the "public interest." Network submits that allowing it to continue service to the former Affinity customers would be a seamless transition, in that there would be no P.I.C. charges incurred by any of the former Affinity customers and no interruption of service. Thus, the granting of the requested waiver by the commission will be in the public interest in general, and specifically in the

interest of the Affinity customers whose accounts are affected by the proposed and pending sale.

WHEREFORE, for each of the above reasons and subject to the foregoing conditions, Network requests that, effective immediately, the Commission grant a waiver of its rules and orders to allow Network to be designated the preferred long distance carrier for current customers of Affinity without obtaining the customers' authorization and verification.

This 23<sup>rd</sup> day of May, 2001.

Respectfully submitted,



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Attorneys for Network US, Inc. and Affinity  
Corporation

STATE OF LOUISIANA

COUNTY OF ORLEANS

**VERIFICATION**

I, Brian Sledz, am the President of Network US, Inc. and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: Brian Sledz  
Name: Brian Sledz  
Title: President

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 4th day of April, 2001.

[Signature]  
Notary Public

My commission expires: at death

STATE OF                WISCONSIN  
COUNTY OF            WAUKESHA

**VERIFICATION**

I, Maurie Daigneau, am the President of Affinity Corporation and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: \_\_\_\_\_

Name: Maurie Daigneau

Title: President

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 30 day of March, 2001.

\_\_\_\_\_  
Notary Public

My commission expires:

1/18/04

## EXHIBIT A

## CERTIFICATE OF SALE

Finova Mezzanine Capital, Inc. ("Finova"), a secured creditor of Affinity Corporation, ("Affinity") certifies that on February 2, 2001, at \_\_\_\_ o' clock p.m., at the offices of Quarles & Brady LLP, 411 East Wisconsin Avenue, Milwaukee, Wisconsin, it sold by quitclaim at a private sale pursuant to Section 409.504, Wis. Stats. to CAA, Inc ("Purchaser"), all of Affinity's right, title and interest in its (1) billed and unbilled accounts receivable; (2) furniture, fixtures and equipment, including all telecommunications equipment, computers, software and office supplies; (3) general intangibles, including all customer records, rights to provide local and long distance telecommunications services to customers; goodwill, tradenames and trademarks; (4) indebtedness of Lits, Inc. to Affinity; and (5) those assets specifically described on Exhibit A, attached hereto and incorporated herein by reference (the "Purchased Assets")

The purchase price was

., paid at closing. This sum was received by Finova in partial satisfaction of the obligations of Affinity to Finova but in full satisfaction of Finova's lien on the Purchased Assets.

The Purchased Assets referred to above were sold "as is" and "where is" without any warranties or representations of any kind or nature (including no warranties as to merchantability or fitness for a particular purpose).



After the proceeds of the sale are applied to the debts and obligations of Affinity to Finova, a substantial deficiency will remain due and owing to Finova. There will be no surplus proceeds available to other creditors or other persons. No proceeds will be refunded to Affinity.

Finova reserves all rights to proceed against all other persons who may also be liable to it for the debts and obligations of Affinity and to proceed against all other collateral pledged to Finova as security for the debts and obligations of Affinity.

This Certificate of Sale is also the record of the disposition of the collateral referred to herein and the application of the proceeds.

Dated this 2<sup>nd</sup> day of February, 2001.

**FINOVA MEZZANINE CAPITAL, INC.**

By: 

Its: VICE PRESIDENT

Approved, accepted and agreed to  
this 2<sup>nd</sup> day of February, 2001.

**CAA, INC., a Wisconsin corporation**

By: 

Its: CEO

**EXHIBIT A**  
**to Certificate of Sale Dated February 2, 2001**  
**Between Finova and CAA**

The "Customer Related Assets," comprised of (1) all end user long distance and local service telecommunications customer accounts of Affinity which are listed in an electronic format satisfactory to Purchaser (the "Customer Accounts") (the end users of the telecommunications services that generate the Customer Accounts shall be hereinafter referred to as the "Customers"); (2) all accounts receivable related to, associated with and derived from the Qualified Customer Accounts wherever incurred (collectively, the "Accounts Receivable"); (3) all of Affinity's rights under any agreements, application forms, term contracts, letters of agency and all other contractual instruments between Affinity and one or more Customers related to the Customer Accounts (collectively, the "Customer Contracts"), including but not limited to Affinity's right to assert claims and take other rightful actions in respect of breaches, defaults and other violations of such Customer Contracts; (4) all customer and other deposits held or made by Affinity related to the Customer Accounts; (5) all authorizations, certifications, licenses, permits and tariffs related to the Customer Accounts; (6) all relationships and goodwill related to the Customer Accounts; and (7) all dialers and other customer premise telecommunications equipment used by Affinity in the provision of local or long distance service to the Customers.

## **EXHIBIT B**

(Pre-Consummation Notice)

Network US, Inc.

Affinity Corporation

(Customer Name)  
(Address)

Dear Customer:

On, [ ] Network US, Inc. ("Network") and Affinity Corporation ("Affinity") entered into an agreement whereby, subject to the regulatory approval, the telecommunications assets of Affinity will be acquired by Network, and Network will become your telecommunication service provider.

This change in ownership will not affect or in any way disrupt your current service. No charges or fees will be imposed and no rate increase will occur as a result of this transaction. The toll free Customer Service number will remain the same and if you have any questions, please call one of our Customer Service Representatives at [ ].

You have a choice of carriers. If you do not wish to remain a customer, you may change carriers and such change will be at the present carrier's expense.

We at Network US, Inc. are pleased to welcome you to our team and would like to express our appreciation for allowing us the opportunity of being your telecommunication service provider. We are confident that you will be pleased with the high quality of our service.

(Post-Consummation Notice)

Network US, Inc.

Affinity Corporation

(Customer Name)

(Address)

Dear Customer:

On, [ ] Network US, Inc. ("Network") and Affinity Corporation ("Affinity") entered into an agreement whereby, subject to regulatory approval, the telecommunications assets of Affinity will be acquired by Network, and Network will become your telecommunication service provider.

This change in ownership has taken effect and should not affect or in any way disrupt your current service. No charges or fees will be imposed and no rate increase will occur as a result of this transaction. The toll free Customer Service number remains the same and if you have any questions, please call one of our Customer Service Representatives at [ ].

You have a choice of carriers. If you do not wish to remain a customer, you may change carriers and such change will be at the present carrier's expense.

We at Network US, Inc. are pleased to welcome you to our team and would like to express our appreciation for allowing us the opportunity of being your telecommunication service provider. We are confident that you will be pleased with the high quality of our service.